

Masthead Logo

The Transnational Human Rights Review

Sovereignty and Canadian-Nigerian Human Rights Engagements: Some Theoretical Reflections

Zachary Lomo

Follow this and additional works at: <https://digitalcommons.osgoode.yorku.ca/thr>

Citation Information

Lomo, Zachary. "Sovereignty and Canadian-Nigerian Human Rights Engagements: Some Theoretical Reflections." *The Transnational Human Rights Review* 6. (2019): 26-.
<https://digitalcommons.osgoode.yorku.ca/thr/vol6/iss1/2>

This Article is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in The Transnational Human Rights Review by an authorized editor of Osgoode Digital Commons.

SOVEREIGNTY AND CANADIAN-NIGERIAN HUMAN RIGHTS ENGAGEMENTS: SOME THEORETICAL REFLECTIONS

ZACHARY A. LOMO

Abstract

This article attempts to draw some theoretical insights from the Canada-Nigeria human rights engagement from 1999 to 2011. Canada and Nigeria claim to seek cooperation on the principles of sovereign equality. What, then, is sovereignty and sovereign equality? The article will attempt to address the various approaches to theorizing sovereignty in four broad conceptual categories – sovereignty as State power and authority; sovereignty as the power and authority of the people; sovereignty as equality; and sovereignty as responsibility to protect. The nature of the Canada-Nigeria engagements in human rights is scrutinized under two main themes – first, engagements in the political, economic spheres are examined; and second, engagements in the field of human rights. Theoretical insights that can be drawn from the Canada-Nigeria engagement in the field of human rights are next discussed and some conclusions from the discussions in the article are drawn.

I . THIS ARTICLE ATTEMPTS TO REFLECT ON SOVEREIGNTY in the light of the human rights engagements between Canada and Nigeria from 1999 to 2011. In so doing, it will first review the complex theory of sovereignty in its various strands. Second, it then discusses the nature of the human rights engagement between Canada and Nigeria. Third, it will draw some theoretical insights into the living character of sovereignty from the nature of these Canada and Nigeria human rights engagements. Fourth, it will draw some conclusions.

II. THEORIZING SOVEREIGNTY:

In their 2012 memorandum of understanding (MOU), Canada and Nigeria sought to “reinforce their cooperation based on the principles of *sovereign equality*, mutual benefit, and respect”¹ as well as consultation in accordance with Charter of the United Nations (emphasis supplied). In what sense did the parties use the expression, “sovereign equality”? Is it the same thing as sovereignty? “Sovereign equality” is an adjectival expression consisting two separate terms, “sovereignty” and “equality,” which are key terms used to characterize the status of States in international law. It implies that for States to be equal, they have to be sovereign. What, then, is sovereignty? What are the indicia and elements of sovereignty and sovereign equality?

Sovereignty and sovereign equality are concepts often associated with state entities by international lawyers (IL), political scientists and their subsets (such as international relations (IR) theorists, political philosophers), and historians. In its simplest meaning, the State may be defined as a community of people living in a particular geographical space and territory, recognized or otherwise. One of the key attributes of the State is said to be its possession of sovereignty. However, the meaning of sovereignty and how it has been conceptualized is contingent upon various world views or visions from which it is framed and historicized within particular locations and times. Sovereignty has been theorized through intellectual and theocratic or ecclesiastical perspectives or visions held at particular epochs.²

¹ See High Commission of Canada in Nigeria, “Memorandum of Understanding Between the Ministry of Foreign Affairs of the Federal Republic of Nigeria and the Department of Foreign Affairs and International Trade of Canada”, (23 January 2013), *Government of Canada*, online: <<http://www.canadainternational.gc.ca/nigeria/highlights-faits/2013/BiNationalCommissionNationaleMixte.aspx?lang=en>>.

² For a survey of the views of the leading thinkers and philosophers on sovereignty, see Winston Nagan & Aitza Haddad, “Sovereignty in Theory and Practice” (2012) 13 San Diego Int’l LJ 429.

From intellectual and ecclesiastical perspectives, sovereignty has been theorized as many things: as the power and authority of the State³, as the power and authority of the people⁴, as the responsibility to protect the common good⁵, as a social construct⁶; and as the responsibility to protect citizens of States and the entire globe.⁷ I will briefly discuss each and conclude with my own perspective on sovereignty.

A. SOVEREIGNTY AS STATE POWER AND AUTHORITY

Within the dominant western intellectual vision of sovereignty, and especially anglophone literature, sovereignty is theorized as State power and authority and historicized in relation to the emergency of the western European State. This historical accounting and theorizing, however, narrowly focuses on English and French historical antecedents and experiences.⁸ Thus, sovereignty is traced to the period of English and French jurists and political philosophers, such as Thomas Hobbes, John Locke, and Jean Bodin. Jean Bodin, the sixteen century French jurist and political philosopher, in particular, is touted as the first intellectual to frame the content of sovereignty, and did so in his seminal work, *De Republica*, published in 1576.⁹ The views of the peoples of the world, other than Europeans, about sovereignty, e.g., from Asia and Africa do not appear anywhere in these aspects of scholarship on sovereignty.

Here, only a brief survey of the theoretical perspectives of Jean Bodin and the legal positivists of the nineteenth and twentieth century (John Austin and Oppenheim) are presented. For Jean Bodin, sovereignty was a source of strength and power which allowed the sovereign, the monarch, during Bodin's time, to have control and authority over the feudal princes and thus construct a single stable European State.¹⁰ Sovereignty meant the power to make law and enforce the law. In Bodin's conceptualization of sovereignty, the sovereign had the power to make law and was not bound by the laws he or she made. The sovereign, Bodin acknowledged, however, was bound by 'the divine law, the law of nature or reason, the law that is common to all nations, and also certain laws which he calls the *leges imperii*, the laws of government'.¹¹

³ See Robert Lansing, "Notes on Sovereignty in a State" (1907), 1:2 Am. J. Int'l L 105; Jean Bodin, "Bodin: On Sovereignty" in Julian H. Franklin, ed, *Cambridge Texts in the History of Political Thought* (Cambridge: Cambridge University Press, 1992).; Thomas Hobbes, *Leviathan*, 1651, (Menston: Scolar P., 1969).

⁴ See Thomas Aquinas, Johannes, *Summa Theologiae*, Volume II, Translated by Fathers of the English (Christian Classics, 1981); see also electronic version, Thomas Aquinas, *The Summa Theologica II* translated by Fathers of the English Dominican Province (Benziger Brothers Edition, 1947), online: <<http://ethics.sandiego.edu/Books/Texts/Aquinas/JustWar.html>>; Wilfrid Parson, "St Thomas Aquinas and Popular Sovereignty" (1947), 16:3 Thought 473; Johannes Althusius, *Politica Methodice Digesta of Johannes Althusius (Althaus)*, 3rd ed (Cambridge: Harvard University Press, 1932).

⁵ See James Johnson, "Humanitarian Intervention, the Responsibility to Protect, and Sovereignty: Historical and Moral Reflections" (2015) 23:3 Int'l LR 609.; Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: The University of Chicago Press, 2014).

⁶ See, e.g., Samuel Puferdorf, *Of the Law of Nature and Nations*, 4th ed (The Law Book Exchange Ltd., 2005).

⁷ See ICISS, *The Responsibility to Protect* (Ottawa, IDRC, 2001); Francis Deng et al, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington D.C.: Brookings Institution, 1996); Geoffrey Butler, "Sovereignty and the League of Nations" (1920), 1 Brit YB Intl L 35.

⁸ See Wyne Hudson, "Fables of Sovereignty" in Trudy Jacobsen, Charles Sampford & Ramesh Thakur, eds, *Re-envisioning Sovereignty: The End of Westphalia?* (Padstow, Cornwall: International Ltd, 2008) 19.

⁹ See Robert Jennings, "Sovereignty and International Law", in Gerard Kreijen et al, eds, *State, Sovereignty, and International Governance* (Oxford, New York: Oxford University Press, 2002) 27 Atul Mishra, "Theorizing State Sovereignty in South Asia" (2008) 43:40 Economic and Political Weekly 65 at 66.

¹⁰ *Ibid.*

¹¹ James Brierly, *The Law of Nations* (1959) cited in *ibid.*

SOVEREIGNTY AND CANADIAN-NIGERIAN HUMAN RIGHTS

Bodin's power-centered theorizing of sovereignty was perfected by late nineteenth and early twentieth century legal positivist international lawyers who theorized international law as a scientific enterprise whereby the validity of law was sought in social facts and not in moral imperatives, and made a distinction between *the law as is*, separate and apart from *the law as it ought to be*.¹² The sovereign, embodied in the State, was the law-giver, and was above the law as far as its internal domain was concerned. John Austin, considered one of the leading nineteenth century proponents of legal positivism, theorized sovereignty in relation to his theory of law, often referred to as the *command theory* of law (emphasis supplied).¹³ Law, according to Austin, "is a rule laid down for the guidance of an intelligent being by an intelligent being having power over him [or her]."¹⁴ In this context, the 'intelligent being having power over him [or her],' is the sovereign. And as far as Austin was concerned, the sovereign was above the law and "any legal limit on the highest lawmaking power was an absurdity and an impossibility":¹⁵ hence the idea that sovereignty means absolute or supreme authority of the State over all the affairs in its internal domain.

Sovereignty as supreme power and authority became a dominant theme amongst positivist public international lawyers and jurists. Lassa Oppenheim, one of the pioneering theorists of positivist public international law, theorized sovereignty as "supreme authority," which implies that it is "an authority which is independent of any other earthly authority."¹⁶ A sovereign state's independence "includes ... independence all round within and without the borders of the country."¹⁷ Lassa Oppenheim distinguished between two forms of sovereignty. One aspect was explained as "comprising the power of a State to exercise supreme authority over all persons and things within its territory."¹⁸ This form of sovereignty is '*territorial* sovereignty' (emphasis in original). The other was explained by him "[a]s comprising the power of a State to exercise supreme authority over its citizens at home and abroad."¹⁹ In this context, 'sovereignty is *personal* supremacy.'²⁰

Thus, legal positivists theorize sovereignty as absolute power of a State over its territory. For the positivists, the State was supreme: "there was no authority superior to the sovereign state"²¹ and the sovereign state "was only bound by rules to which it had consented" and had the "unfettered and ultimate prerogative of waging war."²² From the perspective of the positivist legal theorists of the nineteenth and early twentieth centuries, a State's internal sovereignty was separate from its external sovereignty and what a State does in its internal domain was not the business of anybody else. Thus, sovereignty resided in the State as an

¹² See HLA Hart, "Positivism and the Separation of Law and Morals" (1958) 71:4 Harvard L Rev 593.

¹³ See John Austin, *The Province of Jurisprudence Determined* (Hackett Publication Co Inc, Reprint edn, 1998).

¹⁴ As cited in Lon L Fuller, "Positivism and Fidelity to Law – A Reply to Professor Hart" (1958) 71 Harvard L Rev 630 at 634.

¹⁵ *Ibid.*

¹⁶ Lassa Oppenheim, *International Law, A Treatise*, (London: Longmans, Green and Co, 1905) 171.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Antony Anghie, "Colonialism and the Birth of International Institutions: Sovereignty, Economy, and the Mandate System of the League of Nations" (2002) 34 NYU J Int'l L & Politics 513 at 531.

²² *Ibid.*

abstraction of legal space and geography and therefore only States as sovereigns were the subjects of international law, which was itself a creation of sovereign states.²³

B. SOVEREIGNTY AS THE POWER AND AUTHORITY OF THE PEOPLE

By contrast to the “state power and authority-centered” theories of sovereignty, some thinkers, especially those influenced by theocratic or ecclesiastical thought, approached sovereignty from the premise of God’s sovereignty understood in relational terms with his created universe, and particularly the relationship between God and human beings and how this in turn conditions the relationship between human beings themselves. This approach can be said to be a “people-and-God-centered” approach to theorizing sovereignty. One of the leading proponents of people-and-God-centered sovereignty was thirteenth century theologian and philosopher, St. Thomas Aquinas.

St. Thomas Aquinas’ theory about sovereignty may be gleaned from his accounts of *good government* and the basis of political power and authority, and how power and authority reaches the people²⁴; his accounts of the just war²⁵, liberty and equality, law.²⁶ From these disparate works, St Thomas Aquinas espouses a number of theories whose cumulative effect amount to what Wilfrid Parson describes as *popular sovereignty*.²⁷ In the first place, Aquinas theorized that “Dominion and authority are institutions of human law,” and that while government and the system of governance are man-made but the authority of the ruler over the people derives from God.²⁸ This aspect of St Thomas Aquinas theorizing later influenced works by legal positivist scholars who reformulated the theory in secular language: law, its validity and institutions are a product of social facts devoid of moral imperatives and the idea of God as the source of authority became an aberration.

In the second place, Aquinas theorizes that the community is the basis of political authority which comes from God and the ruler exists for the community and ‘not the other way round.’²⁹ This is because the ruler derives the basis of being a ruler from the community.³⁰ From this perspective, the “government of the ruler is to be ordered to the good of the subjects.”³¹ In other words, the ruler is ruler for the common good and not for his or her self-interest. Indeed, the *bonum commune* or the “common good” is a central idea in Aquinas’ theorization of sovereignty, governance, and authority.³² Legal positivists, by contrast, deified the ruler as the embodiment of sovereignty. They achieved this by discarding the idea of the existence of an authority invisible to the human eye, God, which is central to Aquinas’ theory.

²³ On legal positivism generally, see Samuel Shuman, *Legal Positivism: Its Scope and Limitations* (Detroit: Wayne State University Press, 1963); Robert George, *The Anatomy of Law: Essays on Legal Positivism* (Oxford: Clarendon Press, 1996); Matthew Kramer, *In Defense of Legal Positivism: Law Without Trimmings* (Oxford: Oxford University Press, 1999).

²⁴ See Thomas Aquinas, *The Summa Theologica II* translated by Fathers of the English Dominican Province (Benziger Brothers Edition, 1947), online: <<http://ethics.sandiego.edu/Books/Texts/Aquinas/JustWar.html>>.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Parson, *supra* note 4 at 474.

²⁸ *Ibid* at 477.

²⁹ *Ibid* at 479-80.

³⁰ *Ibid* at 480.

³¹ *Ibid.*

³² See James Turner Johnson, *Sovereignty: Moral and Historical Perspectives* (Washington, DC: Georgetown University Press, 2014) [Johnson].

The centrality of the common good in Aquinas' theorizing of sovereignty is further illustrated by his philosophy of law.³³ According to Aquinas, law derives its force and legitimacy only because it is directed toward achieving the common good of society.³⁴ From this perspective, he defines law as “an ordinance of reason for the common good, made by him who has the care of the community, and promulgated.”³⁵ We see aspects of Aquinas conceptualization of law in Austin's “intelligent being” as the source of law. Unlike Austin, Aquinas contrasted laws for the common good and laws, as Parson puts it, “which are laid upon a people by a ruler, not for the common good but for his own personal interests.”³⁶ Such laws, Aquinas rightly considers them as “acts of violence rather than laws.”³⁷ And echoing Aristotle, Aquinas argues that a government that promotes the common good ‘must be a government of laws, not men’ and ‘the Prince is not *legibus solutus*’, i.e., above the law; he ‘must obey his own laws, even though there be no one above him to coerce him into this.’³⁸ By contrast, positivist such as Austin and his disciples reject this view of law which implies that the law is only law if it achieves the ‘common good’. To the positivists, this is nothing more than attempting to vest the validity of law in moral imperatives. Law is law regardless of its negative impact on those it affects. Similarly, in this positivist view, the sovereign and sovereignty are social realities of power relations, with the most powerful at the top of the pyramid of social relations and ‘common good’ or fairness all but wishful thinking.

Thus, St Thomas Aquinas's theory about sovereignty simply stated is that ‘it is the community which is sovereign, the king its subject.’³⁹ This is because according to him, authority is inherent in the community and this authority is God's authority and the king, as he put it, is God's “ordained minister”.⁴⁰ Sovereignty lay in the people and it entails a responsibility on the ruler to protect their common good. In this context, it may be argued that St Thomas Aquinas theorized sovereignty as responsibility of the ruler to protect its subjects. Aquinas' theory of sovereignty as responsibility to protect may be further gleaned from his work on the just war. According to James T. Johnson, St Thomas Aquinas understood sovereignty as “government of a political community by a person or persons with final responsibility for the well-ordered justice and peace of that community⁴¹.” In other words, sovereignty is not just power *qua* power but the responsibility of temporal sovereign for the “*bonum commune*” or the “common good”. It is only in the defense of the *commonwealth* that the State or the sovereign is entitled to legitimately bear arms and use force against evil forces or threats to the common good.⁴²

³³ Parson, *supra* note 4 at 480.

³⁴ *Ibid* at 480.

³⁵ *Ibid*.

³⁶ *Ibid* at 481.

³⁷ *Ibid*.

³⁸ *Ibid*.

³⁹ *Ibid* at 488.

⁴⁰ *Ibid*.

⁴¹ Johnson, *supra* note 32.

⁴² *Ibid*.

Seventeen century Dutch jurist and political philosopher, Hugo Grotius also theorized that sovereignty resided in the people. To him, the king's power comes from the State, and the power of the State comes from the collective agreement of the people who constitute it.⁴³

Grotius' ideas and theorizing about sovereignty were informed by both his religious belief in God and the practical realities of his time: he had to defend the capture of a Portuguese merchant ship by a Dutch East India Company (V.O.C) fleet in the Far East, "the area around modern-day Singapore."⁴⁴ The key legal and conceptual question that Grotius had to address was whether a private entity such as the V.O.C could legitimately employ force against another private entity, the Portuguese merchant vessel, that was obstructing its actions at sea.⁴⁵ In other words, "who had the competence to lawfully use force,"⁴⁶ the Spanish monarch who had sovereignty over the territories it controlled or the individuals who live in these territories?

Grotius resolved the question with a radically innovative and derivative idea, that power lay with the people and therefore the capture of the Portuguese merchant ship with millions of guilders worth of cargo by a private group of individuals was legitimate and an exercise, so to speak, of sovereignty. The people, as sources of sovereignty, had freedom to do what they deem right and proper. From this perspective, Grotius understood sovereignty as freedom for both the individual and the sovereign.⁴⁷

C. SOVEREIGNTY AS EQUALITY

"Sovereignty" and "sovereign equality" are not synonyms; indeed, sovereign equality is made up of two separate words, "sovereignty" and "equality", as "generally recognized characteristics of States as subjects of international law."⁴⁸ Sovereign equality is one of the key principles of international law that is incorporated in Article 2 of the Charter of the United Nations, which stipulates that the United Nations 'shall be based on the principle of sovereign equality of all its members'.

The idea that membership of the United Nations is premised on sovereign equality suggests that the equality of States flows from the fact of their being sovereign. But sovereignty as understood in international law is focused on the powers and authority of the State and sovereign equality in this context would mean States have equal power and authority. In practice, however, States vary in their possession of power – economic, political, and military power. Sir Robert Jennings acknowledges the existing asymmetrical power relationships between States:

"This equality is not equality of power, territory or economy: states are, by their nature, unequal as regards their territorial, financial, military, and other characteristics. Rather, this equality is as members of the international community whatever the differences between states."⁴⁹

⁴³ Jennings, *supra* note 9 at 28.

⁴⁴ Jon Miller, "Hugo Grotius" in Edward Zalta, ed, *The Stanford Encyclopedia of Philosophy*, online: <<http://plato.stanford.edu/archives/spr2014/entries/grotius/>>.

⁴⁵ *Ibid.*

⁴⁶ Jennings, *supra* note 9 at 28.

⁴⁷ *Ibid* at 29.

⁴⁸ Hans Kelsen, "The Principle of Sovereign Equality of States as a Basis for International Organization" (1944) 53:2 Yale J L 207 at 208.

⁴⁹ Sir Robert Jennings, "Opinion Regarding the Exclusion of Israel from the United Nations Regional Group System" (November 1999) at 19 as cited in Alan Baker, "The Violation of Israel's Right to Sovereign Equality in

SOVEREIGNTY AND CANADIAN-NIGERIAN HUMAN RIGHTS

But Jennings goes on to offer a typical juridical sense of sovereign equality:

“...sovereign equality refers to the legal equality of states, as opposed to the political equality, and is often described as ‘juridical equality,’ i.e., equality before the law; in the case of states, international law.’⁵⁰

Sovereign equality as legal equality of States is what Canada and Nigeria probably had in mind when they agreed in a 2012 MOU to premise their engagement on sovereign equality and related principles stipulated in the Charter of the UN. This is based on the legal positivist vision of sovereignty as the power and authority of the State, albeit subject to international law. Sovereign equality may also be theorized in relation to a theory of sovereignty premised on the authority of the people as explained in this article. Sovereign equality is an element of sovereignty. If sovereignty is *a status of being and marker of identity of a particular polity*, what are its inherent elements? I would suggest that a first fundamental element of sovereignty is its constancy and indivisibility. While social, economic, and political factors may change, the sovereignty of a people or community does not. From this flows the second element – equal rights.

Possession of sovereignty entails possession of equal rights for all States regardless of other factors such as size of territory, economy, military might, etc. Equality calls for respect of each State and this includes respects for its rights to choose its friends, choose its development path, and its culture. Third, sovereignty entails independence and autonomy. True, we live in a world that is allegedly interdependent, today than never before, but interdependence properly understood does not undermine the independence and autonomy of a State or a people. And crucially, sovereignty entails obligations as well. The rights of a State or a people or individuals are counterbalanced with the obligations owing to others, in particular, the recognition and respect of the inherent dignity of the other, abstaining from acts or omissions that may cause harm to the other or violate their dignity.

D. SOVEREIGNTY AS RESPONSIBILITY

(i) From Absolute to Limited Sovereignty

Interwar jurists of the twentieth century theorized sovereignty in the light of the ravages of World War I and were confronted with the problem of “how to devise a system that somehow effectively limited state sovereignty as understood in international law even while recognizing that the sovereign state was the major, if not the only, actor in international law.”⁵¹ The interwar jurists (unlike the positivist jurists of old who deified sovereignty of the State and divorced law from the social, political and asymmetrical power relations, and economic milieu in which States engaged in the production of international law), focused on deconstructing “absolute and uncontrolled sovereign State”⁵² by espousing ideas of sovereignty that connected the internal sovereignty of the State to external sovereignty, and placed limits on the powers of the sovereign state. Indeed, some scholars such as Sir Robert Jennings have suggested that during the tenure of the League of Nations, international lawyers of the time thought that the “idea of sovereignty

the United Nations” in Alan Baker, ed, *Israel's Rights as a Nation-State in International Diplomacy* (Jerusalem: Jerusalem Centre for Public Affairs, 2011) 147 at 148, online: <<http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=137137>>. [Jennings Opinion].

⁵⁰ *Ibid* at 148.

⁵¹ *Anghie, supra* note 21 at 532.

⁵² *Jennings Opinion, supra* note 49.

was an obstacle to the development of international law” and that what was needed above all was what was called a “surrender of sovereignty.”⁵³

Butler, a leading inter-war international lawyer, developed a concept of sovereignty in relation to fundamental rights. He submitted that “in defining sovereignty we should be prepared to reconsider the connection which is now usually held to exist between sovereignty and fundamental rights”⁵⁴ and that “we should be prepared to find in the pre-existence of lawful rights reason for the existence of sovereignty; to postulate certain fundamental ethical rights, to define them as rights attaching to the individual.”⁵⁵ And crucially, we should “*conceive sovereignty as existing to preserve, increase, and minister to these rights in a particular manner, and to regard it as a meaningless phrase if these conditions are not satisfied.*”⁵⁶ For Butler, a State was sovereign only if it protects, promotes, and respects the rights of individuals. Sovereignty is a hollow concept if it is not directly connected with a State’s obligation and rights to promote and protect the rights of its citizens. Butler provides an early vision of sovereignty as responsibility to protect the rights of citizens. Viewed in this context, the International Commission on Intervention and State Sovereignty (ICISS)’s much vouched “responsibility to protect or so-called “R2P” doctrine is nothing new, but is a reformulation of ideas that were already posited by twentieth century inter-war legal scholars.

Hans Kelsen, one such interwar legal theorist, theorized sovereignty as “the legal authority of the states under the authority of international law.”⁵⁷ The legal authority of States is not absolute even if it is often referred to as “supreme” authority.⁵⁸ He goes on further to explain that, “a state’s legal authority may be said to be supreme” insofar as it is not subjected to the legal authority of any other state; and the state is then sovereign when it is subjected only to international law, not to the national law of any other state.”⁵⁹

(ii) *From Limited Sovereignty to the Age of Responsibility to Protect*

While inter-war international lawyers sought to place certain modicum limits on the sovereignty of the State, what Sir Robert Jennings described as “surrender of sovereignty,” their late twentieth century counterparts sought not merely a surrender of sovereignty but a rather radical reconceptualization of sovereignty to allegedly account for “new realities” brought about by so-called processes of globalization. Two broad projects of reconceptualizing sovereignty during this period may be identified. The first project is that championed by individual international law and political science scholars who premise their case for a new way to conceptualize sovereignty on what they consider as the reality of a globalized world, where economic interdependence is the determinant of survival for both individuals and States. For this group of international law and political science scholars, globalization has whittled the eminent character of state sovereignty as understood so much so that it is an anachronism to speak of sovereignty,

⁵³ Jennings, *supra* note 9 at 29.

⁵⁴ Geoffrey Butler, “Sovereignty and the League of Nations” (1920) 1 British Yearbook of Int’l L 35 at 37 [Butler].

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Kelsen, *supra* note 48 at 208.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

especially with respect to a State's internal domain.⁶⁰ Indeed, while some of them talk of the "new sovereignty," others believe that the notion of sovereignty may already be a myth.⁶¹

The second project on reconceptualizing and theorizing sovereignty was initiated by the quintet of the Brookings Institutions⁶², and later taken over by the United Nations, whose working theory is that sovereignty means the responsibility of a State to protect (often abbreviated as R2P) its citizens and its failure to do just that gives the so-called international community the right to intervene and protect civilians in its territory whose lives are in substantial danger.

(iii) *The birth of a new norm or a reinvention of the wheel?*

By the end of the twentieth century, we witnessed yet another macabre performance of the human species: that of unbridled brutality and violence to its own. From Rwanda, the Democratic Republic of the Congo (DRC), Darfur, Somalia, Liberia, Sierra Leone to Srebrenica, Chechnya, Kosovo groups and communities tried to outdo each other in deliberately and purposefully eliminating the other, in part or in whole by mass killings and inflicting on the other conditions of life calculated to bring about its physical destruction. This is despite the criminalization of these acts by the *Convention on the Prevention and Punishment of the Crime of Genocide*.⁶³ And to this macabre situation, add the oppressive poverty and arresting inequality between individuals, between communities, and between States, in the light of unprecedented wealth of a few individuals and States.

In the face of these systemic human tragedies, States responded in ways that raised fundamental questions about the central organizing idea of the international system, the idea of the sovereignty of States, which in part posits that no State or States can intervene in the internal domain of another. The critical question became, "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?"⁶⁴

One way around this conundrum is to reconcile the competing goals of intervention and fidelity to state sovereignty, although that is easier said than done. As Kofi Annan starkly put it:

We confront a real dilemma. Few would disagree that both the defense of humanity and the defense of sovereignty are principles that must be supported. Alas, that does not tell us which principle should prevail when they are in conflict.⁶⁵

The former Secretary General was not shy to suggest which of these two principles should prevail in case of tension between the two. According to him:

"Humanitarian intervention is a sensitive issue, fraught with political difficulty and not susceptible to easy answers. But surely, no legal principle – not even sovereignty – can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to

⁶⁰ See Abraham Chaye & Antonia H Chaye, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge: Harvard University Press, 1998); Ann-Marie Slaughter, "Sovereignty and Power in a Networked World Order" (2004) 40 *Stanford J Int'l L* 283.

⁶¹ See Elihu Lauterpacht, "Sovereignty – Myth or Reality" (1997) 73 *Int'l Affairs* 137.

⁶² See Francis Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington DC: Brookings Institution, 1996).

⁶³ *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 UNTS 277 at 280 (entered into force 12 January 1951).

⁶⁴ Kofi A Annan, *We the Peoples: The Role of the United Nations in the 21st Century* (New York: Department of Public Information, the United Nations, 2000) at 48.

⁶⁵ *Ibid.*

halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community. The fact that we cannot protect people everywhere is no reason for doing nothing when we can. *Armed intervention should always remain the option of last resort, but in the face of mass murder it is an option that cannot be relinquished*⁶⁶ (Emphasis supplied).

The general consensus emerging from the late 1990s and post-Annan's millennium report amongst liberal and neoliberal intellectuals and activists appears to be that the problems of egregious violations of human rights as seen at the close of the twentieth century in Africa, Europe, Asia, and Latin America could have been avoided but for the sovereignty of States which barred intervention. Intervention in countries that have imploded and engulfed in war, as the examples in Africa from Rwanda to Darfur demonstrated, was seen as the only means to secure the rights of victims of war.

(iv) *R2P and the Brookings Institution*

The pioneering work of the Brookings Institution's quintet of Francis M Deng, Sadikiel Kimaro, Terrence Lyons, Donald Rothchild, and William Zartman, *Sovereignty as Responsibility: Conflict Management in Africa* published in 1996 attempted to make the case for intervention. For this to happen, they theorized sovereignty as responsibility to protect all the people in situations of conflict. In this framing of sovereignty as R2P, they proposed not only a "balancing between national sovereignty and the need for international action to provide protection and assistance to victims of internal conflict,"⁶⁷ but also "reaffirming the responsibility of sovereignty and accountability to the domestic and external constituencies as interconnected principles of the international order."⁶⁸

Therefore, for a State's claim to its sovereignty to "be legitimate, sovereignty must demonstrate responsibility, which means at the very least ensuring a certain level of protection for providing the basic needs of the people."⁶⁹ Butler made this point more than a quarter of a century before Deng *et al* that sovereignty is "a meaningless phrase" if it did not "preserve, increase and minister to these rights," which he described as "fundamental ethical rights."⁷⁰

Deng *et al*, further theorized that it may not be enough to simply say that sovereignty implies responsibility to protect. The existence of a higher authority capable of holding the sovereign accountable is an integral aspect of transforming the nature of sovereignty as responsibility to protect.⁷¹ The higher authority they envisaged is the United Nations. Again, here Butler saw the League of Nations as capable of possessing "authoritative sovereignty," the equivalent of the higher authority proposed by Deng *et al*.

(v) *R2P and the ICISS*

The United Nations and the International Commission on Intervention and State Sovereignty (ICISS), an initiative of the Canadian government, built on the work of Francis Deng *et al*. The

⁶⁶ *Ibid*.

⁶⁷ Deng, *supra* note 62 at 27.

⁶⁸ *Ibid*.

⁶⁹ *Ibid* at 32.

⁷⁰ See Butler, *supra* note 54 at 37.

⁷¹ *Ibid*.

ICISS issued its report, *Responsibility to Protect* in 2011.⁷² For ICISS, the responsibility to protect is a new approach to addressing allegedly new problems in changed circumstances and for the future. This approach proceeds from the realization that “millions of human beings remain at the mercy of civil wars, insurgencies, state repression, and state collapse,”⁷³ and the dilemma of how to deliver “practical protection for ordinary people, at risk of their lives, because their States are unwilling or unable to protect them.” And crucially, experience was seen by them as the best teacher:

“The experience and aftermath of Somalia, Rwanda, Srebrenica and Kosovo, as well as interventions and non-interventions in a number of other places, have provided a clear indication that the tools, devices and thinking of international relations need now to be comprehensively reassessed, in order to meet the foreseeable needs of the 21st century.”

For ICISS, and as was the case for Deng *et al*, the starting point was to dissect the concepts of *sovereignty* and *intervention* as understood and derive new language and meaning capable of accommodating an interventionist policy in the face of the mass murder of civilians. The ICISS chose to move away from the languages that framed the past debates, namely humanitarian intervention and the right to intervene. For humanitarian intervention, it chose “to refer either to ‘intervention,’ or as appropriate ‘military intervention,’ for human protection purposes.”⁷⁴ And for *the right to intervene* it preferred the language of “*the responsibility to protect*”⁷⁵ (Emphasis supplied). ICISS was overly aware that, “changing the language of the debate, while it removes a barrier to effective action, does not, of course, change the substantive issues which have to be addressed.”⁷⁶

Having justified the necessity for a new language for framing the issues, the ICISS then proceeds to offer a theorization of sovereignty that leads it to addressing the substantive issues and articulating their final product, *the responsibility to protect*. A new meaning of sovereignty from its classical pedigree that is deeply entrenched in the Charter of the United Nation and State practice, as a legal identity in international law that entitled the State to equal standing in relation to other States, called for a re-evaluation of the nature of obligations under that very Charter that deified sovereignty and the norm of non-intervention in the internal domain of the State by other States.⁷⁷ The ICISS theorized that under the organizing principle of the United Nations system, membership in the Organization was “the final symbol of independent sovereign statehood and thus the seal of acceptance into the community of nations.”⁷⁸

But while membership into the Organization is voluntary, it comes with responsibilities. In the first place, “in granting membership of the UN, the international community welcomes the signatory states as a responsible member of the community of nations.” In the second place, the member State “in signing the Charter, accepts the responsibility of membership flowing from the signature” and in doing so, “there is no transfer or dilution of state sovereignty.” And crucially, while there is no transfer or dilution of sovereignty, “there is a necessary re-characterization

⁷² ICISS, *The Responsibility to Protect: Report of the International Commission for Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001) [ICISS].

⁷³ *Ibid* at paras 2.1, 11.

⁷⁴ *Ibid* at paras 1.39, 9.

⁷⁵ *Ibid* at paras 2.4, 11.

⁷⁶ *Ibid* at paras 2.5, 12.

⁷⁷ *Ibid* see e.g. paras 2.7 – 2.9 at 12.

⁷⁸ *Ibid* at paras 2.11, 13.

involved: *from sovereignty as control to sovereignty as responsibility* in both internal functions and external duties”⁷⁹ (Emphasis in original).

What, then, are the specific contents of the re-conceptualization of sovereignty as responsibility? Three fundamental responsibilities are identified and explained. The first is the responsibility of the State “for the functions of protecting the safety and lives of citizens and promotion of their welfare.”⁸⁰ The second responsibility is “to the citizens internally and to the international community through the UN.”⁸¹ And the third responsibility is for the State to be “accountable for their actions of commission and omission.”⁸² Thus, responsibility is owed both to the citizens and the international community under the umbrella of the UN. These three elements of responsibility were addressed by Deng, *et al*, as discussed above. The difference between the ICISS and the Brookings Institution quintet is that ICISS was a larger enterprise involving eminent former politicians and diplomats and possibly with vast resources at its disposal and conversing far more perspectives from various interest groups than the Brookings Institution’s quintet. But the end product is the same: sovereignty should be reconceptualized as the responsibility to protect.

(vi) *R2P: Old wine in new wineskins or new wine in old wineskins?*

Without attempting to down play the significance of the contribution of these eminent people and scholars, what is really new about reconceptualizing sovereignty as responsibility, or as the responsibility to protect? And is the responsibility to protect really a new norm just discovered at the close of the millennium? Was there no idea of responsibility to protect in many African communities ravaged by war and destruction?

The recent theorizations of sovereignty as responsibility to protect by its leading proponents share one thing in common: the attempt to remove sovereignty from its abstraction in positivist meticulous legalism and infusing it with real life issues in sociology, politics, and economics, aspects hitherto considered non-legal within the positivist legal paradigm. In so doing, sovereignty is now being presented as a status that defines a community of people, and from this perspective, sovereignty actually resides in the people and implies the duty of those in charge to protect the citizenry.

This new rendition of sovereignty in ways that attempt to place emphasis on the people as the primary basis of authority and governance, I would argue, is not a new idea at all. In the preceding sections of this article it was shown that as early as the thirteenth century, St Thomas Aquinas theorized, albeit from a theological platform, that the community is the sovereign and the king is the subject. In other words, sovereignty resides in the people and the leaders are actually given the authority to govern not for their selfish interests but for the common good,⁸³ and should they fail that responsibility, the people had a right to overturn tables on their bad leaders. Similarly, seventeenth century Dutch jurist, Hugo Grotius conceptualized sovereignty in

⁷⁹ *Ibid* at paras 2.14, 13.

⁸⁰ *Ibid* at paras 2.15, 13.

⁸¹ *Ibid*.

⁸² *Ibid* at paras 2.15, 13.

⁸³ See *Parson*, *supra* note 4 at 488.

relation to the people and implied that sovereignty resided in the people who have rights and freedoms. And during the inter-war period, a context no less ominous than the late twentieth century, Sir Geoffrey Butler, attempted to frame sovereignty as responsibility to protect rights and believed that the League of Nations should be “the higher authority,” in the same way that later proponents such as Deng *et al* and the ICISS submitted that the UN (and its Security Council in particular) should be the high authority to oversee responsible sovereignty.

And as recent as 1949, the concept of responsibility to protect was invoked by the United Nations as the justification for its bid to construct a new institutional arrangement that would provide international protection to refugees.⁸⁴ While it was not, at the time, framed in a language that drew an explicit interconnection between sovereignty and responsibility, it was nonetheless an implicit idea that the UN as an organization of sovereign member States, and implicitly its members, has responsibility to protect refugees, whose countries of origin had failed in their primary responsibility to protect them.

Thus, in searching for solutions to similar problems, each successive generation has attempted to cast its problems and challenges as unique or unprecedented or modern and only sought historical antecedents to justify that perspective. As the words of the Biblical Book of Ecclesiastes, emphasize, “there is nothing new under the sun.”⁸⁵ There might be new ways of doing the same things done before but it is important to make clear distinctions as to what is an innovation and what is fundamentally a new idea. This would allow for a better understanding why the ideas did not work in the past and what lessons can be learnt from the past to inform current decisions.

This attempt to cast problems as unique or unprecedented is understandable given the inherent biases in each generation’s world view. In some instances, there are deliberate attempts to skew or distort historical accounts to legitimate current interests. Hudson, for example, suggests that the attempt to secularize sovereignty in the anglophone literature, especially in the medieval era is possibly borne by an anti-religion predisposition.⁸⁶ Indeed, the neoliberal rendition of Bodin, Hobbes, Grotius, etc., is to secularize their views even when it is clear that many of these jurists and philosophers theorized and philosophized many aspects, including sovereignty from strongly religious inclinations.⁸⁷

This has two important implications. First, one set of ideas and ideals have been presented as the ultimate truth and as universal, while the others have been distorted and despised. The deification of sovereignty and the State by classical positivist public international lawyers in ways that placed the rulers on an unquestionable pedestal, with dire consequences (as exemplified by two bloody European wars) is a case in point. Secondly, while purporting to be objective, western visions of the world have been and continue to be imposed on, for example, African realities, dismissing everything African as uncivilized or as undermining human rights. Yet, in many African communities there exist a coherent set of systems and institutions that distribute responsibility to every member and that provide protection for various groups such as women, children, and elders. There are mechanisms for conflict resolution, both within a given

⁸⁴ See *Refugees and Stateless Persons*, GA Res 319 (IV), UNGAOR, 4th Sess, (1949) 36.

⁸⁵ Ecclesiastes 1:9.

⁸⁶ Hudson, *supra* note 8.

⁸⁷ *Ibid.*

community and conflict between two or more communities. In many African communities, sovereignty truly resided in the people.

(vii) *Problematizing the Responsibility to Protect (R2P)*

In addition to the problems of re-inventing the wheel, there are two main problems with the way the concept of responsibility to protect has been conceptualized and marketed. First, the rendition of the problems in Rwanda, Srebrenica, Somalia, Darfur, Kosovo, etc., as being entirely internal problems with internal causes. Nowhere in the background material can one find any objective discussions of the subtle subtexts of the structural continuities and discontinuities of international politics and how these influence the internal dynamics of statehood, especially in Africa, where naked colonial power has metamorphosed into subtle but dispersed new sites of power such as the Bretton Woods institutions⁸⁸, with equal capacity to control and dominate the people of Africa, promote capital flight, and increase unemployment.⁸⁹

Therefore, any theory of the responsibility to protect that does not attempt to address the role of external actors in contributing to creating the conditions that eventually lead to an implosion and armed conflict, of whatever description, in affected States is flawed. In the context of Africa, for example, where former colonial powers and other powerful states, inter-governmental organizations (such as the World Bank and the International Monetary Fund), and the UN itself, all-too-often dictate policies that drive inequality, promote capital flight from many African countries, and perpetuate western dominance through ideological colonialism, any theory of responsibility to protect must address the responsibility of these actors as well. Sadly, this is not the case. The analyses are steeped towards characterizing and framing a caricature of the problems in these countries as innate in the very nature of the people in these countries, with the outsider, the western intervenor as the solution.⁹⁰ The ICISS, for example, had this to say when setting the background to its theorizing of sovereignty as responsibility to protect:

“The UN is an organization dedicated to the maintenance of international peace and security on the basis of protecting the territorial integrity, political independence and national sovereignty of its member states. *But the overwhelming majority of today’s armed conflicts are internal, not inter-state*”⁹¹ (Emphasis supplied).

The idea that the overwhelming majority of today’s armed conflicts are internal, i.e., not State versus another State, is fundamentally misleading and typifies the internalist thesis referred to already and betrays either a deliberate effort at falsifying the truth about the causes of these conflicts or an inadvertent ignorance of the dynamics of international politics.

⁸⁸ The International Bank of Reconstruction and Development, IBRD, often referred to as the World Bank, and the International Monetary Fund, often referred to as the IMF.

⁸⁹ On this aspect, see, Saskia Sassen, *The Mobility of Labor and Capital: A Study in International Investment and Labor Flow* (Cambridge: Cambridge University Press, 1990). Sassen’s central thesis in this work is that foreign investment in less developed countries can actually lead to emigration if it goes to the labor intensive section or it devastates the traditional economy. Many World Bank and IMF neo-liberal economic reforms precisely privilege foreign investment in less developed economies over local innovative initiatives that at least ensure that a large section of the society is engaged in some activity, often farming on land.

⁹⁰ Of course there are a few people in the west who take the trouble to see the issues beyond the internalist narratives that dominate the discourses on the problems in the developing countries, and Africa in particular. See James Orbinski, *An Imperfect Offering: Humanitarian Action in the Twenty-First Century* (Toronto: Anchor Canada, 2009); Samantha Nutt, *Damned Nations: Greed, Guns, Armies, and Aid* (Toronto: Signal, 2012).

⁹¹ ICISS, *supra* note 72 at para 2.12.

While the cases of Cote D'Ivoire and Libya are illustrative here, the discussion will only focus on the former. In discussions about whether to apply the principle of the responsibility to protect in the Cote d'Ivoire, the role of France in the chaos in the country hardly featured anywhere. The outbreak of civil war in Cote D'Ivoire in 2002 is generally seen by outsiders as an internal conflict caused by historically embedded inequalities between the different regions of the country and bad governance.⁹² And while the internalist thesis may hold true to some extent, the reality, however, is that the conflict in the Cote D'Ivoire, as is the case for all these former colonies of western imperial powers in Africa, is partly the creation of its former colonial power, France, which is implicated in the conflict that eventually engulfed Cote D'Ivoire. France, albeit through its companies, has continued to control the economies of its "former" colonies in Africa, since most of the leaders of these countries signed pacts of 'friendship' with France and allowed French control through the back door. The leaders of former colonies that try to seek true independence for their countries by giving control of the economy to its citizens have run the risk of antagonizing French interests and being deposed from power.⁹³ A classic example is the case of the late Thomas Sankara of Burkina Faso. Thomas Sankara took power in a coup in 1984 with his erstwhile friend Blaise Compaore⁹⁴, and attempted to cut dependence on France for almost everything, including food. He also tried to lay an industrial base in which Burkinabes would be really in charge of their own country.⁹⁵ But in so doing, Thomas Sankara rubbed the French interests the wrong way and the French eventually got rid of him using his friend Blaise Compaore, with the complicity of the late Cote d'Ivoirien President Felix Houphouet-Boigny.⁹⁶ For the uncritical eye, however, the coup in Burkina Faso in 1987 that led to the assassination of Thomas Sankara was sold as an internal conflict or problem.

Similarly, under the late octogenarian President, Felix Houphouet-Boigny, France through political, security, economic, and cultural ties maintained a tight control on Cote D'Ivoire; French citizens owned companies and business in key sectors of the economy and thus in reality controlled the economy of Cote d'Ivoire.⁹⁷ But when President Laurent Gbagbo came to power, in partly contested election results in 2000, his plans to reform the economy by reducing French influence and fighting corruption in the economy, brought him problems with the French who, despite their apparent posture as peace brokers during the crisis, hatched the

⁹² See Philip Roessler, "The Enemy Within: Personal Rule, Coups, and Civil War in Africa" (2011) 63:2 World Politics 300 – 346; Joseph Sany, "Education and Conflict in Cote d'Ivoire", *United States Institute of Peace: Special Report* (April 2010) at 4; Patrick Meehan, "The 'problem' with Cote d'Ivoire": how the media misrepresent the causes of the conflict", *Open Democracy* (13 January 2011), online: <<https://www.opendemocracy.net/opensecurity/patrick-meehan/problem-with-c%C3%B4te-d%E2%80%99Ivoire-how-media-misrepresent-causes-of-conflict>>; Christian Purefoy, "What is causing the conflict in Ivory Coast?", *CNN* (5 April 2011), online: <<http://edition.cnn.com/2011/WORLD/africa/04/03/ivory.coast.explainer/>>

⁹³ See Tom Mbakwe, "Cote d'Ivoire: The Story behind the Story", *The New African Magazine* (8 February 2011).

⁹⁴ Blaise Compaore was deposed in 2014 by a popular uprising against his bid to amend the constitution and seek another term in office. On this aspect, see Bettina Engels, "Political Transition in Burkina Faso: The Fall of Blaise Compaore" (2015) 2:1 Governance in Africa 1.

⁹⁵ On some of Sanakara's achievements, see Hippolyte Fofack, "Thomas Sankara: A Leader Before His Time", *New African Magazine* (13 December 2012), online: <<http://newafricanmagazine.com/thomas-sankara-a-leader-before-his-time/>>.

⁹⁶ On this aspect, see Joan Baxter, *Dust From Our Eyes: An Unblinkered Look at Africa* (Oxford: Pambazuka Press, 2011) – on Thomas Sankara, specifically see Chapter 5.

⁹⁷ See Anastacia Promskaya, "West Africa: France Still Robbing its 'Former' African Colonies", *Pambazuka News* (25 September 2015), online: <<https://www.pambazuka.org/governance/france-still-robbing-its-former-african-colonies>>.

plan to get rid of him by sponsoring the rebellion in the northern part of the country.⁹⁸ Gary Busch, for example, sees the crisis of Ivory Coast as rooted in the continued dominance of that country by France:

“The reasons for the continuance of French dominance of the Ivory Coast are easy to see. The root cause of this situation is the French *Francafrique* policy towards Africa; its neo-colonial activities which have blighted Ivory Coast democracy for decades. The French never actually gave up owning and controlling Ivory Coast even after it had achieved ‘flag independence’; having a flag, a national anthem, a seat in the UN and a football team.

Thus, while in theory Ivory Coast was an independent African State, in practice it was tethered in every aspect of life, including economic life, to its colonial master France. Again, according to Gary Busch:

“The *Pacte Coloniale*, which had tethered the economy, trade, finance and military structures to France was carried out in every Ivorian ministry, the bank and institution by the hundreds of French nationals sent to the Ivory Coast as ‘advisors’ under the French Ministry of Co-operation. In some ministries there was one Frenchman for every Ivorian. Ivorian sovereignty was demeaned by the presence of the French ‘co-operants’ *who made many actual decisions in running the country...The French business community dominates almost every aspect of the national economy*, even the oil industry and cocoa industry where it shares its presence with a limited number of foreign companies...*It was only the government of the FPI, led by President Gbagbo, who tried to loosen the French reins on the country...*”⁹⁹ (emphasis supplied)

This invidious and systemic interference by France in the Cote d’Ivoire is not considered in the underlying assumptions of R2P. The UN intervention in Ivory Coast led by France under the cloak of R2P masked the real causes of the conflict and especially the dynamics of asymmetries of power relations between Cote d’Ivoire and its colonial master, France, and the vested interests of the latter in the Cote d’Ivoire. The UN, the liberal and the neoliberal worlds were taken in by the characterization of the conflict in Cote d’Ivoire as an internal conflict for which the Gbagbo government was wholly held responsible. Sometimes references were made to the rebels but only in a more perfunctory manner. Yet, the real culprit in the whole tragedy of Cote d’Ivoire, France, is never going to be held accountable for the gross violations of human rights which occurred in that country as a result of conflict that it planned, funded, and executed with the rebel outfit it created under the leadership of Alassane Ouattara, considered more sympathetic to French interests in Cote d’Ivoire and who has now handed control of Ivory Coast back to France (just as Blaise Compaoré handed over control of Burkina Faso to France).¹⁰⁰

While the idea of R2P is not invidious *per se*, its underlying assumptions fail to explicitly capture the role of external interests as part of a wider set of factors causing conflict,

⁹⁸See Gary Busch, “The UN, and the Ivory Coast” (26 April 2013), *Ocnus.Net*, online: <http://www.ocnus.net/artman2/publish/Editorial_10/The-French-the-UN-and-the-Ivory-Coast.shtml>; Gary K. Busch, “The sun is setting on European neo-colonialism” (24 March 2011), *Ocnus.Net*, online: <http://www.ocnus.net/artman2/publish/Editorial_10/The-Sun-Is-Setting-On-European-Neo-Colonialism.shtml>; Jessica Kohler, *From Miraculous to Disastrous: The Crisis in Cote D’Ivoire* (Geneva, Centre for Applied Studies in International Negotiations, 2003); Other reports make an effort to present a far more balanced and nuanced analysis of the crisis, e.g. The International Crisis Group, “Cote D’Ivoire: ‘The War is Not Yet Over’” (28 November 2003).

⁹⁹ Gary Busch, “The French, the UN and the Ivory Coast”, *Pambazuka News* (1 May 2013), online: <<http://pambazuka.org/en/category/features/87217>>.

¹⁰⁰ See Thabo Mbeki, “What the World Got Wrong in Cote D’Ivoire”, *Foreign Policy* (29 April 2011); for a contrary perspective, see Giulia Piccolino, “David Against Goliath in Cote D’Ivoire? Laurent Gbagbo’s War Against Global Governance” (2011) 111:442 *Afr Aff* 1.

especially by powerful former colonial powers (such as France) in Africa, and international inter-governmental organizations (including the United Nations and its agencies). Yet, any valid theory of R2P must proceed from the premise that sovereignty resides in the people of a given country and they through their leaders have the exclusive right to determine their interests. In addition, a theory of R2P must integrate both internal and external factors and interests and allocate responsibility for the resulting suffering of civilians to all involved, whether powerful states or others.¹⁰¹

E. CONCLUSION

Sovereignty is a complex concept that does not lend itself to precise theorizing. It is constructed upon contingent interests in time and space. The dominant theory of sovereignty is that postulated by nineteenth and twentieth century legal positivists who deified the Westphalian State and clothed it with absolutist and juristic authority and power. This served European powers well (they conquered territories far and wide and shared them amongst themselves), but still could not avoid two bloody and destructive European wars in the twentieth century.

There is a return to the medieval antecedents of theorizing sovereignty in relation to the people and not abstractly in relation to the State. Sovereignty resides in the people and all people are equal in dignity. It is the people who are sovereign and the State as a community of people is an instrumentality of enacting that sovereignty both at the domestic and international level. In this sense, sovereignty entails equality amongst peoples and States; it also entails both rights and obligations for States to serve their people and protect the common good. From this perspective, sovereignty is not synonymous with ability but with the dignity and rights and duties of peoples.

III. THE NATURE OF CANADIAN-NIGERIAN HUMAN RIGHTS ENGAGEMENTS:

If sovereignty is the dignity and authority of the people and entails equality amongst peoples and States, how might one characterize the engagements between Canada and Nigeria as “equal” sovereigns in the area of human rights during the period under review? It might be helpful to approach this in two ways: first, by assessing their engagements in the political, economic, and social realms and second, through assessing their human rights engagements specifically.

A. ENGAGEMENTS IN THE POLITICAL, ECONOMIC, AND SOCIAL SPHERES

At the political level, the relation between Nigeria and Canada has been described by some Nigerians as ‘cordial’¹⁰² resulting from “years of mutual respect, cooperation and historical association to the Commonwealth.”¹⁰³ In the view of these commentators, Nigeria and Canada “have always enjoyed excellent relations.”¹⁰⁴ Canada is seen as “a great friend of Nigeria”¹⁰⁵ and

¹⁰¹ See Alexandra dos Reis Stephanopoulos & George A Lopez, “From Coercive to Protective Tools: The Evolution of Targeted Sanctions” in Monica Serrano & Thomas Weiss, eds, *The International Politics of Human Rights: Rallying to the R2P Cause?* (New York: Routledge, 2014) 48 at 56-58.

¹⁰² For example, see the weighty intervention of His Excellency, Ambassador Olufemi Oyewale George, High Commissioner, High Commission of the Federal Republic of Nigeria in Canada, while appearing before the Standing Senate Committee on Foreign Affairs, Special Study on Africa, 23 February 2005, in Canada, *Proceedings of the Senate Standing Committee on Foreign Affairs, Special Study on Africa* (Ottawa: Public Works and Government Service Canada, 2005) 33 [*Proceedings*].

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid* at 8:33.

¹⁰⁵ *Ibid* at 8:34.

both countries are said to have “always been friends and have always depended on each other in so many issues.”¹⁰⁶

According to the Canadian High Commission in Nigeria, “Canada enjoys strong and increasing bilateral relations with Nigeria, which is one of two strategic partners for Canada in Sub-Saharan Africa.”¹⁰⁷ Canada and Nigeria “share values such as multi-culturalism” and “have federal system of governance and are members of the Commonwealth.”¹⁰⁸

The relations did suffer some set back, however, when the Sani Abacha military junta was in power and particularly after its blatant execution of Ken Saro-Wiwa and eight other Ogoni activists in November 1995. Thus from 1995-1998, Canada broke off diplomatic ties with Nigeria.¹⁰⁹ Full diplomatic relations were restored after the restoration of democratic rule in May 1999.¹¹⁰ Canada played a significant role in mobilizing and sustaining international support and pressure to restore democratic rule in Nigeria. The extent, if any, to which Nigeria has influenced political outcomes in Canada remains, at best, unknown.

Engagements between Canada and Nigeria in the economic sphere, according to some Nigerians, have not been as good as it has been in the political sphere. The “excellent” political engagements have yet to be “translated into greater dividends in the economic sphere.”¹¹¹ According to some assessments in 2005, for example, overall “bilateral trade is low in volume and variety” and Canadian investment in the Nigerian economy is dismally small.¹¹²

There have been some improvements since 2005, however. In 2013, past the period under review, the volume of trade between the two countries was said to be “rapidly growing” and the private sector in both countries was seen to be playing a “strong role” in “expanding the two countries economic ties.”¹¹³ The Canadian High Commission in Nigeria indicated that “Nigeria is Canada’s largest bilateral merchandise trading partner in sub-Saharan Africa, and trade between Nigeria and Canada has increased more than threefold since 2007...”¹¹⁴ Moreover, as at today, “[t]he Canadian business presence in Nigeria is substantial and multi-faceted”¹¹⁵ and “Canadian interests cover a full range of key sectors, including oil and gas, telecommunications, and manufacturing equipment, aeronautics, energy, and engineering education services.”¹¹⁶

Canadian-Nigerian relations in the social realm, from the perspective of some Nigerians, have also lacked the exuberance experienced in the political field. A major concern raised by one informant, a former Nigerian High Commissioner to Canada, is a lack of

¹⁰⁶ *Ibid* at 8:44.

¹⁰⁷ High Commission of Canada in Nigeria, online: <http://www.canadainternational.gc.ca/nigeria_draft/bilateral_relations_bilaterales/canada_nigeria.aspx?lang=eng;> [High Commission of Canada in Nigeria].

¹⁰⁸ *Ibid*.

¹⁰⁹ See Evan Potter, “Nigeria and the Commonwealth: Explaining Canada’s Hard-line Approach to Sanctions, 1995 – 1996” (1997) 86:342 *The Round Table: The Commonwealth Journal of Int’l Affairs* 205 at 206.

¹¹⁰ See *Proceedings*, *supra* note 102 at 8:34.

¹¹¹ *Ibid* at 8:34.

¹¹² *Ibid*.

¹¹³ See High Commission of Canada in Nigeria, “Joint Communiqué by the Honorable Ministers of Trade of Nigeria and Canada under the Nigeria-Canada Bi-National Commission”, (28 January 2013), *Government of Canada*, online: http://www.canadainternational.gc.ca/nigeria/highlights-faits/2013/JC_CC-Jan2013.aspx?lang=en [*Joint Communiqué*].

¹¹⁴ *High Commission of Canada in Nigeria*, *supra* note 107.

¹¹⁵ *Ibid*.

¹¹⁶ *Ibid*.

reciprocity. Appearing before Canada's Senate's Standing Senate Committee on Foreign Affairs' Study on Africa in 2005, he told the Committee that "[a]t the social level, Nigerians are experiencing considerable obstacles in obtaining Canadian entry visas. *Regrettably, my mission's prompt issuance of visas to Canadians is not being reciprocated.*"¹¹⁷ (emphasis supplied). He reiterated his misgivings with the way Canada treated Nigerian applicants for entry visas in interviews conducted for this project and pointed out that one of the main problems in the Canada-Nigeria engagement is "the way they treated our nationals"¹¹⁸

By contrast, Canadian officials seem not to see the same social problems in the relationship as the Nigerians. The Canadian High Commission in Nigeria states that Canada and Nigeria enjoy increasing bilateral relations and one reason is that Canada and Nigeria share "people-to-people ties which provide a solid foundation for increased engagement."¹¹⁹

A related issue to the refusal of entry visas to Nigerians is the expulsion of Nigerians who entered Canada illegally. Nigeria was disappointed that Canada, whom they considered a friend, could simply deport their citizens without considering the implications or even at least informing the Nigerian Foreign Affairs Ministry.¹²⁰ As a friend, letting the Nigerians know of the impending deportation of the citizens would have allowed some form of engagement between the two countries on the best possible way to address the issue.¹²¹

B. ENGAGEMENTS IN THE HUMAN RIGHTS FIELD

The focus here is on the nature of the human rights engagements between Canada and Nigeria and the main driver or drivers of this relationship. Other aspects that could also be examined include the attainments, if any, of these human rights engagements, the problems, and impact of trade on these engagements, and what human rights issues each country has pushed in each other's domain.

(i) The Nature of the Engagements

The nature of Canada-Nigeria engagements in the field of human rights is not as clear as one would like it to be. Informants interviewed for the research project on which this volume is based had different perspectives about the nature of the engagement. One informant, for example, described the engagements as "good"; another said it was "solid"¹²²; and yet another said it was "very healthy; both countries get along very well"¹²³; and at least four informants said they "don't know" the nature of the engagements.

While from the perspective of those Nigerian NGOs that are recipients of Canadian funding, whether through Canadian private foundations or government agencies such as CIDA, the engagements between Canada and Nigeria in the field of human rights is solid, other NGOs and individuals see the two countries as pursuing competing visions of human rights, especially on a government-to-government level. One informant stated that "Canada sees human rights from their own angle alone. They do not see the Nigerian angle to human rights."¹²⁴ The same

¹¹⁷ See *supra* note 102 at 8:32.

¹¹⁸ Interviewed on 25 June 2014, Abuja, Nigeria.

¹¹⁹ See *supra* note 107.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² Interviewed on 5 June 2014, Ajah, Lagos State, Nigeria [*Interview 5 June 2014*].

¹²³ Interviewed on June 2014, Abuja, Nigeria [*Interview June 2014*].

¹²⁴ Interviewed on 25 June 2014, Abuja, Nigeria.

informant stated that on “a government-to-government basis, we will always have clashes because they wouldn’t see issues the way we are seeing it.”¹²⁵

It may therefore appear that at a governmental level, Canadian-Nigerian human rights engagements are characterized, in part, by clashes, tensions, and biases. In other words, to many actors/commentators, Canada’s idea about human rights and Nigeria’s idea of human rights are informed by two different worldviews of human rights. When High Commissioner Olufemi Oyewale George appeared before the Standing Senate Committee on Foreign Affairs’ Study on Africa on 23 February 2005, for example, he made no explicit reference to human rights. Instead, his presentation focused on the broad level of political, economic, and social issues.¹²⁶ By contrast, and as pointed already, respondents working with NGOs that were recipients of Canadian funding, saw the human rights relationship between Canada and Nigeria in glowingly positive terms – it is ‘solid’¹²⁷ or ‘very healthy’.¹²⁸

That there is bound to be tension between Canada and Nigeria in the realm of human rights should not be surprising to anyone familiar with the foreign policy objectives that each country pursues. Canada’s foreign policy is informed by among other things, a belief that “Canadians expect their government to be a leader in the human rights field by reflecting and promoting Canadian values on the international stage.”¹²⁹ The idea that Canada’s citizens expect their government to promote Canadian values at the international stage as human rights raises the question whether Canadian values are universal and synonymous with human rights. Indeed, others might ask what right do Canadians have to think that their values must be projected and imposed on others? What happens to those who do not share some Canadian values? It raises the old spectre of the “civilized” versus “uncivilized” people dichotomization, with the “civilized” arrogating to themselves the power to “civilize” the “uncivilized.”

Nigeria’s foreign policy, by contrast, is driven by a radically different set of principles: fighting for African unity and independence, peaceful settlement of disputes, non-alignment and non-intentional interference in the internal affairs of other nations, and regional economic cooperation and development.¹³⁰ Thus, Nigeria’s foreign policy does not aim to project Nigerian values as human rights on the international stage but to pursue cooperation in diverse areas of human endeavor in order to create peaceful and stable communities, both in Africa and other parts of the world.

(ii) The Drivers of the Relationship

With diametrically opposing world views about human rights, who then drives the human rights agenda in the engagements between the two countries in this field? At least four informants indicated that Canada is the main driver of Canadian-Nigerian human rights engagements.

¹²⁵ *Ibid.*

¹²⁶ See *supra* note 102 at 8:27.

¹²⁷ See *Interview 5 June 2014*, *supra* note 122.

¹²⁸ See *Interview June 2014*, *supra* note 123.

¹²⁹ Government of Canada, “Promoting and Protecting Human Rights”, online: <<http://international.gc.ca/world-monde/campaign-campagne/rights-droits/index.aspx?lang=eng>>.

¹³⁰ For a critique of Nigerian foreign policy, see Oluyemi Fayomi, Felix C Chidozie & Lady A Ajayi, “Nigeria’s National Image and her Foreign Policy: An Exploratory Approach” (2015) 5 *Open J Political Sci* 180.

SOVEREIGNTY AND CANADIAN-NIGERIAN HUMAN RIGHTS

Indeed, one informant clearly stated that the “main driver is Canada. Nigeria is being driven.” Some informants observed that the Canadian government uses its State agencies such as the Canadian International Development Agency (CIDA) and the High Commission of Canada in Nigeria to push for human right issues in Nigeria. Other informants pointed out that Canadian NGOs, such as the Canadian Local Fund Initiative (CLFI), the Canadian Human Rights Trust (CHRT), are active on the ground providing funding to Nigerian NGOs pursuing human right issues of importance to Canada and Canadians. Informants identified the right to health, and women’s and children’s right to health in particular, as being one of the main areas of human rights that Canada is pushing for through CIDA in Nigeria.

If Canada is the dominant driver of human rights in these engagements, what influence, if any, has Nigeria had on the internal or domestic dynamics of human rights issues in Canada? Only one informant indicated that “Nigeria hasn’t pushed for any human rights issues in Canada”, observing that instead “Canada has pushed human rights issues in Nigeria.” The majority of the informants suggested that Canada is the dominant of the two in pushing for human rights in Nigeria’s territory. It may be argued that Nigeria’s inability to influence human rights issues in Canada is consistent with its foreign policy of generally not interfering in the internal domain of other countries, and therefore should not be a surprise to anyone. One might contend that Nigeria, while more populous than Canada and with vast resources, is still a Third World country, poorly managed on the balance, and poor; and that it thus has little to offer to Canada.

C. CONCLUSION

While both Nigeria and Canada officially assert that bilateral relations between them are “excellent” or “strong”, none of two tends to talk explicitly about the nature of their engagements in the area of human rights. It is not clear whether the strength of the bilateral relations extends to their engagements in the field of human rights.

The evidence suggests Canada and its NGOs are the main drivers of human rights issues in the broader spectrum of bilateral relations between these two countries. Canada in particular does this through a number of ways, such as support through CIDA for Nigeria’s health system, albeit with a focus on women and child health issues.

It would appear that any issues about the nature of the cooperation between the two countries in the field of human rights are buried in diplomatic speak and will require a more critical discourse analysis to fathom these.

IV. SOME THEORETICAL REFLECTIONS ON THE CANADIAN-NIGERIAN HUMAN RIGHTS ENGAGEMENTS:

What theoretical insights might be drawn from the discussion above on the broad character of Canadian-Nigerian human rights engagements? This question is tackled in the following sub-sections.

A. SOVEREIGNTY AS DIGNITY AND THE RIGHTS OF PEOPLE

The evidence demonstrates that Canada is the more dominant partner in its human rights relationship with Nigeria given its greater economic power, and thus its ability to fund NGOs

and the like, provide technical support to governmental ministries and so on, and influence human rights related events and activities in Nigeria. Nigeria, on the other hand, has been shown or known not to have pushed for human rights issues in Canada, even though there are serious human rights issues in Canada to pick from, such as the issue of the rights of the indigenous peoples and the squalid conditions in which some of them live. This may be largely due to its weak economic position and standing in comparison to Canada and its foreign policy posture of non-interference in the internal affairs of other country. Thus, there is an element of asymmetrical power relation here. The question, then, is what are the implications of this asymmetry of power relations between the two for theorizing sovereignty? Can Canada and Nigeria be said to possess equal sovereignty in the light of the vast material inequalities between them?

To reflect on a theory of sovereignty that incorporates the material differences between Canada and Nigeria and States in general, I revisit the idea of the people as the basis of sovereignty as theorized by Aquinas and others, and as was discussed earlier. A people-centered premise allows one to focus on the *status of being* rather than the *ability* to possess physical power and material wealth in order to frame the content of sovereignty. This approach sharply contrasts with the dominant positivist and liberal version, which focuses on the State and power to inscribe what sovereignty is. From the dominant positivist formulation, sovereignty meant the power and authority of the European State to have exclusive domain within its spaces as well as a right to access and control territories it considered *terra nullius*, i.e., ‘nobody’s land’, thereby opening the door for colonialism, imperialism, and domination of non-European peoples.¹³¹ Implicit in the theorizing of sovereignty from the western positivist frame is the association of sovereignty with *capability* or *ability* or *civilization*.

From a people-centered premise, however, sovereignty may be theorized as *an inherent identity and dignity* of a given community of people, occupying a defined territory anywhere on planet earth, with a distinct culture – their language, art, science, technology, religion, mores, traditions, and beliefs systems.¹³² The social, economic, and political organization of that community need not be identical to that of any other community, however advanced and sophisticated this other community may regard itself. Thus, sovereignty is a distinctive *marker* of a collective *being* that transcends racial bigotry and possession of military and economic competence and capacity. Sovereignty as an inherent and distinctive marker of the being of a community is a constant as dignity is to human beings, who collectively form a community of people. From this perspective, sovereignty may be theorized as dignity.¹³³ In other words, a

¹³¹ On these aspects, see Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2007).

¹³² Ngugi Thiongo, *Decolonizing the Mind: The Politics of Language in African Literature* (London: James Curry Ltd/Heinemann Publishers, 2011).

¹³³ There are competing visions of what constitute dignity. The vision of dignity used in this article is that inspired by Scripture, in particular the Bible, the idea that all human beings were created in the image of God and therefore have incomparable worth. On both biblical and Kantian perspectives on dignity, see Meir Cohen, “A Concept of Dignity” (2011) 49:9 Israeli L Rev 9; for a view of human dignity as the “moral ‘source’ from which all of the rights derive their basic meaning”, see Jürgen Habermas, “The Concept of Human Dignity and Realistic Utopia of Human Rights”, in Claudio Corradetti, ed, *Philosophical Dimensions of Human Rights: Some Contemporary Views* (New

given community of people has *dignity*, regardless of whether they are considered a State in the sense of western Westphalian model, or whether they are poor. It is sufficient for the community to regard themselves, in their own right, as a distinct community or a nation. In this context, communities that others would consider uncivilized are a sovereign people as much as the English, Canadians, Americans, or Nigerians.

Thus, the sovereignty of the contemporary State as a community of peoples is the total sum of the dignity of its entire people; it is not the unquestionable authority and power of some abstract entity, above which there is no other. Just as the fact of being and having dignity as a human being is the basis upon which the inherent rights and obligations of the individual flow, so is sovereignty of the people. It is the basis from which a group or community derives its right to self-determination and statehood and the State and the people become inseparable for without the people there can be no State. Sovereignty, seen from this perspective, reconceptualizes the State not merely as an abstract juridical entity, but rather as an organic community of people.

This approach to theorizing sovereignty rejects the notion of sovereignty as the power and capacity of an abstract State, because a State is a State not because it has capacity – military, economic, and technological – but because it is a community of people made up of individuals each of whom possess dignity and power and authority derive from them. This proposition does not necessarily discount the importance of power and capacity of whatever color but simply clarifies the often blurred distinction between the state of being and the consequences of possessing or not possessing something, such as power and capacity. The contention being that the state of being is not *a priori* dependent on possession of capacity or power because the capacity to do things or to make things happen and the inherent fact of being are two distinct phenomena. The inability of a person to do certain things or to do the wrong things does not in any way undermine the fact of their being a *being* and in possession of an identity, and *dignity*.

This is because several factors may determine questions of power and capacity, some of which may be intrinsic to the person or entity but others may be the result of external factors. For instance, Nigeria is a colonial creation, its people having been dominated by British colonial rule for decades and a great deal of its current predicaments must be traced to external factors, quite apart from the more well discussed internal factors. Or, does a poor person and a rich person have dignity on the basis of their status as a poor or rich or because both are human beings? The rich man has greater economic capacity but may lack the capacity to love and tolerate others. Are both imbued with equal dignity? Capacity may be acquired; it is not inherent in the nature of being but dignity is inherently woven into the nature of being. Similarly, is State A with a gross national product (GNP) of, say, \$3 billion imbued with equal sovereignty with State B which has a greater GNP of \$3 trillion? Or framing this in people terms is Community A with a wealth of \$3bn without sovereignty while Community B with a wealth of \$3 trillion imbued with sovereignty? With a \$3 trillion worth, Community B may be said to have more economic capacity. But the \$3 trillion GNP may be controlled by a very minute percentage of the entire population with the majority impoverished.

Theorizing sovereignty in this way allows us to place the vast material inequalities between Canada and Nigeria in context: they are not constitutive of sovereignty. The sovereignty and equality of both States is derived from the dignity of their respective peoples, not the economic material wealth that each has amassed. Therefore, sovereignty may also be theorized as a bundle of rights and obligations and not abilities or capabilities.

A people-centered approach to theorizing sovereignty further allows one to overcome the implicit racial biases in dominant western Liberal theories of the State and of sovereignty that deny the sovereignty of African peoples and of indigenous communities in the Americas and Australia. Because these communities lacked the military capabilities of the colonial rulers, they were deemed not to possess dignity and rights. In other words, they were seen as not sovereign, even though before the despicable advent of colonialism they had established distinct functioning communities with varying levels of sophistication.¹³⁴ Despite their various levels of sophistication, these people were viewed by all-too-many Europeans (whether scholars, priests, or politicians) as inferior, uncivilized, and barbarous, and as therefore not deserving of equal treatment as human beings capable of the possession of dignity and sovereignty. And while colonialism has in theory ended in Africa and Africans now live in distinct States created by the colonial enterprise, the denigration of Africa's peoples as inferior and as lacking in sovereignty continues even today by some western intellectuals and jurists alike, some even going as far as calling for the recolonization of Africa.¹³⁵

And crucially, institutions such as the International Court of Justice that is supposed to be the beacon of international justice continues to perpetrate the idea that African communities lacked sovereignty and were merely identifiable areas of territory. The Court had this to say in the *Cameroon v Nigeria* (with Equatorial Guinea intervening) case in response to Nigeria's contention that the Chief and Kings of Old Calabar had sovereignty over their territories vis-à-vis the 1884 agreement with Great Britain:

In the view of the Court many factors point to the 1884 Treaty signed with the Kings and Chiefs of Old Calabar as not establishing an international protectorate. It was one of a multitude in a region where the local Rulers were not regarded as States. Indeed, apart from the parallel declarations of various lesser Chiefs agreeing to be bound by the 1884 Treaty, there is not even convincing evidence of a central federal power. There appears in Old Calabar rather to have been individual townships, headed by Chiefs, who regarded themselves as owing a general allegiance to more important Kings and Chiefs. Further, from the outset Britain regarded itself as administering the territories comprised in the 1884 Treaty, and not just protecting them. Consul Johnston reported in 1888 that "the country between the boundary of Lagos and the German boundary of Cameroons" was "administered by Her Majesty's Consular Officers, under various Orders in Council". The fact that a delegation was sent to London by the Kings and Chiefs of Old Calabar in 1913 to discuss matters of land tenure cannot be considered as implying international personality. It simply confirms the British administration by indirect rule.¹³⁶

¹³⁴ See e.g. Dakas Dakas, "The Role of International Law in the Colonization of Africa: A Review in Light of Recent Call for Re-Colonization" (1999) 7 Afr Yearbook of Intl L 85.

¹³⁵ *Ibid*; also see Dakas CJ Dakas, *International Law on Trial: Bakassi and the Eurocentricity of International Law* (Jos, Nigeria: St Stephens Book House Inc, 2003) [Dakas].

¹³⁶ *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening)*, 2002 ICJ Reports at 303, para 207; for critique of this judgment, see Dakas, *ibid* at 59 – 92.

The Court thus adopts the legal positivist view of sovereignty which inheres in an abstract powerful State and roundly rejects any suggestions that the conquered peoples of Old Calabar possessed sovereignty.

Therefore, the vast material inequality between Canada and Nigeria does not imply that Nigerians have lesser sovereignty in comparison to Canadians. If Canada proceeds to fund programs in Nigeria consistent with Canada's interests and values but which may be opposed by Nigeria because they contradict Nigeria's values, Canada will be undermining Nigerian sovereignty because it will be intruding in the internal affairs of Nigeria based on its economic might. It might, however, be argued that if Nigeria opposes such Canadian funding activities that are not consistent with Nigerian values, then Nigeria will be expressing its sovereignty. Such an argument, while persuasive, conflates two different things: expression of sovereignty and undermining sovereignty by another are not one and the same thing.

B. SELF-INTEREST IN STRATEGIC RELATIONSHIPS

In their bilateral or multilateral relations states often claim to be pursuing shared interests and goals. The Canadian-Nigerian relationship has not been an exception. In fact, in their MoU of 2012 Canada and Nigeria appear to premise their relations on sovereign equality and respect and a framework for "constructing lasting strategic partnership between the two federal, multicultural democracies."¹³⁷ The praxis, however, points to other, often unarticulated reasons in the agreement for cooperation: the innate national self-interests of each State. In this context, the realists and their neo-realist cousins (despite some damaging criticisms, especially from the Constructivist school of IR) still have a point when they theorize that nothing less than the national interests of States is the key driver for States' accumulation of power and drive to form strategic partnerships.¹³⁸

Indeed, one informant stated that Canada's human rights drive in Nigeria through CIDA and NGOs should not be delinked from its national, especially economic, interests, noting that:

"[W]hile Canada contributes to human rights projects in Nigeria through CIDA for the NGOs as well as supports government parastatals, they do this to benefit their own economy so that they can gain good trade networks and better import/export relationships."

Another informant argued that Canada's contribution to democracy and the right to health in Nigeria "earns Canada some favor in the eyes of Nigeria because of the aid they give us."

While the engagements between Canada and Nigeria are not explicitly driven by realist theoretical imperatives, it is evident that each country is at least pursuing certain national interests from the relationship. At least Canada's interests in Nigeria are known. Canadian interests cover 'key sectors, including oil and gas' resources, sell its technology and invest in a booming telecommunications sector, market its manufacturing equipment, exploit opportunities in aeronautics, energy, engineering, education, mining technology, and transportation.¹³⁹

¹³⁷ High Commission of Canada in Nigeria, "Joint Communique of the Inaugural Meeting of the Nigeria-Canada Bi-National Commission" (14 November 2012).

¹³⁸ A few examples will suffice. On 25 October 1983 the US invaded Grenada and deposed its Marxist regime that was allied to Cuba; 20 December 1990 the US invades Panama and deposes General Manuel Noriega.

¹³⁹ High Commission of Canada in Nigeria, "Canada-Nigeria Relations", *Government of Canada*, online: <http://www.canadainternational.gc.ca/nigeria/bilateral_relations_bilaterales/canada_nigeria.aspx?lang=eng&menu_id=299>.

Investing abroad may be less costly, especially with weak labor laws in Nigeria (and Africa in general) and this might help energize its economy and provide opportunities for its citizens both at home and abroad.

Similarly, Nigeria's interests in the relationship are easily discernible. It hopes to tap into Canadian expertise and investment in infrastructure development especially at the state and federal level, attract Canadian investments in agriculture, information and communication technology, whose cumulative impact, it hopes, will spur its own economic growth and expand the opportunities available for its own citizens. And there is more to these economic interests. A relationship with a strategic partner such as Canada comes at a time when Nigeria is working hard to shed its past image, an image awash with military generals turning tables on each other and violating human rights with abandon, including being suspended from the Commonwealth at the peak of one of its worst experiences at bad governance under General Sani Abacha who executed a number of Nigerian human rights activists, including renowned environmentalist and Ogoni-cause flag bearer, Ken Saro-Wiwa.

With the advent of civilian rule in 1999 under General Olusegun Obasanjo and later two successful changes of its national leadership through the ballot rather than the barrel of the gun, Nigeria's image of notoriety for disregard for the rule of law, democracy, and observance of human rights had considerably improved by the time of the signing of the MOU in 2012. The successful election of 2015 where former President Jonathan Goodluck conceded defeat to General Buhari has raised the hopes and aspirations of Nigerians that something good is eventually in sight. However, the precarious nature of Nigeria's apparent democratization process, and its execution of the war on terror, (especially its war against the radical Islamist outfit, Boko Haram), raise concerns that Nigeria is not yet totally out of the woods. In this context, continued cooperation with a State of stature such as Canada that has over the years constructed for itself an image of a moral actor on the international plane,¹⁴⁰ is critical in projecting a new of image of being accepted into the community of democratic States.

C. CONSTRUCTION OF A DISTINCT IMAGE

Both Canada and Nigeria appear to be keen on constructing an image that projects their value systems, although Nigeria is possibly less successful in achieving this as it has had very limited, if any, influence on domestic Canadian politics. And while their values may be at variance in certain respects, especially in the context of human rights, the two countries have since establishing diplomatic relations in 1960, identified with the Commonwealth, federalism, and multiculturalism as sites where certain of their interests converge or may converge.¹⁴¹ Indeed, in a joint communique issued after the inaugural meeting of the Nigeria-Canada Binational Commission (BNC), an entity established by a memorandum of understanding in 2012, the two

¹⁴⁰ See Edward Akuffo, *Canadian Foreign Policy in Africa: Regional Approaches to Peace, Security and Development* (Farnham, UK: Ashgate, 2012).

¹⁴¹ See Potter, *supra* note 109 at 206.

SOVEREIGNTY AND CANADIAN-NIGERIAN HUMAN RIGHTS

countries pledged that “the BNC will be the basis for constructing a lasting strategic partnership between the two federal, multicultural democracies.”¹⁴²

Canada has always projected the image of a generous, liberal, and democratic country that pursues a multilateralist and cooperative relationship with other countries.¹⁴³ In other words, it cares about the interests of other countries and its relationship with others seeks to enhance those interests while not dominating the country at issue. Canada portrays itself as a country that exerts positive influences, especially in the promotion and protection of human rights and the support of democratization processes in countries considered less democratic. Canada, for example, provided support to the 1999 elections that launched Nigeria’s most recent drive to democracy and this support must be seen in the context of Canada’s unflinching stand against the military junta of late Nigerian president General Sani Abacha, under whose regime egregious violations of human rights occurred. Moreover, Canada was amongst the first Western countries to re-establish diplomatic relations with Nigeria immediately after General Abdusalami Abubakar came to power in 1998 and promised to usher in fundamental changes that would lead Nigeria on the path to democracy. Canada started bilateral negotiations with the new rulers in Nigeria with a view of supporting political reforms.¹⁴⁴ Consequent Canadian-Nigerian engagements in the area of democratic governance saw Canada provide support for Nigeria’s 2003 and 2007 elections, a trend that continued even up to the 2015 elections.¹⁴⁵

Nigeria has also projected the image of the “big brother” on the African continent, with a foreign policy that sought to play a key role in the liberation struggles of many African communities yet under the yoke of colonialism and other forms of imperial dominance in Africa, including the fight to abolish apartheid in South Africa. In addition, Nigeria played a leading role in the creation, funding, and development of the Economic Community of West African States (ECOWAS), a fifteen-member community, the Organization of African Unity (OAU) and its transformation into the African Union (AU), and the establishment of the New Partnership for Africa’s Development (NEPAD). ECOWAS is possibly the only African organization with some clout as demonstrated by its role in the search for solutions to the armed conflicts that ravaged impoverish countries in the region such as Liberia and Sierra Leone, Ivory Coast, Guinea, Guinea Bissau, and Mali.¹⁴⁶ Also, Nigeria plays an instrumental role in international peace support operations and is “the second largest troop contributing African nation and the fifth largest globally.”¹⁴⁷

Thus, it may be theorized from the character of the Canadian-Nigerian encounters in the human rights field, and the underlying context, that States seek to enhance their image by ascribing to a vision of themselves as a community of people of equal dignity and hence equal

¹⁴² High Commission of Canada in Nigeria, “Joint Communique of the Inaugural Meeting of the Nigeria-Canada Bi-National Commission” (14 November 2014).

¹⁴³ See Canada, *Canada’s International Policy Statement: A Role of Pride and Influence in the World* (Ottawa: Queen’s Printer, 2005).

¹⁴⁴ See *supra* note 102 at 8:32.

¹⁴⁵ *Ibid.*

¹⁴⁶ See Adekeye Adebajo, “Nigeria and South Africa: On the Concept “Every African is His Brother’s Keeper”, in Monica Serrano & Thomas G Weiss, eds, *The International Politics of Human Rights: Rallying for R2P Cause?* (London and New York: Routledge, 2014) 171.

¹⁴⁷ *Supra* note 107.

sovereignty. Approaching their inter-state engagements in this way reduces suspicions and enhances the opportunity for identifying mutual or complementary interests.

D. THE SOCIALIZATION OF THE “OTHER” INTO ONE’S VALUE SYSTEM

Some States seek to socialize others into their value systems and aim to capitalize on cooperative relationships to achieve this, instead of using blatant force and threats. The Canadian-Nigerian engagements in the human rights field typify this aspect. In comparative terms, and as noted already, Canada has a much bigger economy and a competitive edge in many areas, from manufacturing, transportation, agriculture to telecommunications technology. These are aspects in which the Nigerian economy does not, at present, possess a competitive position but is making progress toward achieving. In this context, Canada can bring to bear on Nigeria this vast source of leverage in ways that ensure that Canadian values become embedded in every aspect of Canadian assistance to Nigeria. The evidence suggests that a number of Nigerian NGOs funded through Canada’s CIDA and private foundations have embraced Canadian values without question. One informant whose organization has benefitted from Canadian funding spoke in glowing terms of the nature of the relationship between Canada and Nigerian in the area of human rights. According to this informant:

“I think the cooperation between Canada and Nigeria on human rights is solid. For us at... in December 2013 through January this year we got funding from the CLFI (Canadian Local Fund Initiative) for our meetings. The funding also covered the payment of our staff time in all the ancillary payments for the meeting to happen. Also, the Canadian Human Rights Trust paid for the screening of a movie we created titled “The Veil of Silence”, which also aired in Canada. We have very good partnership, but it is through the CLFI and the Human Rights Trust.”

States with economic and military power are more likely to be minded tying aid to their poorer counterparts to the promotion of values that they espouse. Aid thus can be used as a means of softening attitudes and persuading aid recipients to receive and accept the aid giver’s worldview as the right worldview. Canada has not spared the opportunity to do that in its relations with Nigeria. Following their second meeting under the auspices of the Bi-National Commission in January 2013, for example, Canada offered to help Nigeria surmount its security challenges posed by the terrorist group, Boko Haram but only “within a framework that respects human rights and the rule of law.”¹⁴⁸

E. VALUES CAN BE SACRIFICED

Economic interests always seem to trump human rights values. This is regardless of the public rhetoric about linking aid with human rights. One informant noted that “[h]uman rights hinders trade if the understanding is not parallel,”¹⁴⁹ that is if human rights and trade are not understood as both beneficial and “trade affects every country’s relationship” with others.¹⁵⁰ Indeed, another

¹⁴⁸ *Joint Communiqué*, *supra* note 113.

¹⁴⁹ Interviewed on 25 June 2014, Gwarimpa Estate, Abuja, Nigeria.

¹⁵⁰ *Ibid.*

SOVEREIGNTY AND CANADIAN-NIGERIAN HUMAN RIGHTS

said that ‘the wire of politics connects human rights with trade and even government regimes as they change.’¹⁵¹

But given the low of volume of trade between Canada and Nigeria during the period under review, it is not possible to assess how Canada would have behaved in its crusade to promote human rights in Nigeria if Canadian multinational corporations played a key role in the Nigerian economy, especially the natural resources economy. Private corporations are the conduits through which a state’s economic interests in another state can be realized and most of these companies wield enormous powers and possess vast resources. Their influence on policy and human rights is often huge. They are a dominant group with capacity to lobby political power brokers. They also have access to the highest echelons of power within the state and all-too-often influence economic policies that promote their own interest and those of the shareholders.

Cases of multinationals operating in countries with known poor human rights record and violating the rights of local people, such as polluting their water sources, environmental degradation, land expropriation, and lower wages are well documented.¹⁵² Yet these companies’ home country governments or States rarely intervened and instead sought ways to strengthen protection of their country’s companies.¹⁵³

Canada, under the former Harper government, provides a classic example. While Canada prides itself as promoting human rights and Canadian values, the case of Canadian mining companies in countries such as Tanzania, Liberia, Guinea, and Sierra Leone demonstrate that economic interest all-too-often trumps others values, including human rights. When rich Canadian mining companies, for example, face local opposition in these countries and the developing world generally because of their destructive policies and activities, the Canadian government sides with them and relentlessly pressures the governments of these poor countries to protect these companies.¹⁵⁴

Canada intervened in Tanzania, for example, on behalf of Canadian gold mining giant’s subsidiary in Africa, African Barrick Gold, which has a huge mining portfolio in Tanzania, and lobbied the Government of Tanzania and Tanzanian Parliament to reject the recommendations of the Presidential Mining Sector Review Committee.¹⁵⁵ The recommendations were contained in a report by the Committee, whose mandate was to amongst other things, scrutinize the mining

¹⁵¹ Interviewed on 14 June 2014, Edidem Plaza, Wuse Zone 1, Abuja, Nigeria.

¹⁵² Facing Finance, *Dirty Profits: Report on Companies and Financial Institutions Benefitting from Violations of Human Rights* (2012), online: <http://www.facing-finance.org/wp-content/blogs.dir/16/files/2012/12/ff_dirtyprofits.pdf>; Facing Finance, *Dirty Profits II: Report on Companies and Financial Institutions Benefitting from Violations of Human Rights* (2013), online: <http://www.facing-finance.org/files/2013/12/DIRTY_PROFITS_II.pdf>; Francis Adeola, “Environmental Injustice and Human Rights Abuse: The States, MNCs, and Repression of Minority Groups in the World System” (2001) 8:1 Hum Ecol Rev 39; Francis Adeola, “Endangered Community, Enduring People: Toxic Contamination, Health, and Adaptive Responses in a Local Context” (2000) 32:2 Env & Behav 209; Francis Adeola, “Cross-National Environmental Injustice and Human Rights: A Review of Evidence in the Developing World” (2000), 43:4 Am Behav Sci 686; Bill Moyers, *Global Dumping Ground: The International Traffic in Hazardous Waste* (Washington DC: Seven Locks Press, 1990); Stephen Bunker, *Underdeveloping the Amazon: Extraction, Unequal Exchange, and the Failure of the Modern State* (Urbana, IL: University of Illinois Press, 1985).

¹⁵³ See Wilfred Edwin, “Canada Movers to Protect its Mining Interests”, *The East African* (2 August 2008), online: <<http://www.theeastafrican.co.ke/business/-/2560/446068/-/6l8mm9z/-/index.html>> [Edwin].

¹⁵⁴ See Yves Engler, *The Ugly Canadian: Stephen Harper’s Foreign Policy* (Vancouver, BC: RED Publishers, 2012).

¹⁵⁵ See Society for International Development (SID), *The Extractive Resource Industry in Tanzania: Status and Challenges in the Mining Sector* (Nairobi, SID Regional Office for Eastern Africa, Report, 2009) 65 [SID].

sector and review mining contracts.¹⁵⁶ Some of the Committee's key recommendations included, amending the various tax laws to cover loopholes exploited by mining multinational companies, granting fewer tax exemptions for mining companies, taking a number of measures to expand the government role and stake in commercial mining companies, and instituting a timely and fair compensation for communities affected by mining projects.¹⁵⁷ The Committee's reports comes after an earlier report commissioned by an association of religious groups in Tanzania, published in March 2008, investigated the extent to which Tanzania was benefitting from its gold resources.¹⁵⁸ The report identified three serious problems with Tanzania's gold mining industry: first, it 'provides the government with miniscule tax revenue'; second, it is 'subject to minimal governmental and democratic scrutiny'; and third, 'people in the gold mining area are not benefitting and many are being made poorer.'¹⁵⁹ And crucially, between 2002 and 2005, 'Tanzania exported gold worth more than US\$2.5bn'¹⁶⁰ but only 'received an average of US\$21.7m a year in royalties and taxes on these exports.'¹⁶¹ Moreover, the report points that a conservative estimate of 'the combined loss to Tanzania of a low royalty rate, unpaid corporate tax, and tax evasion is at least US\$400m over the past seven years.'¹⁶² Before the advent of large-scale gold mining in Tanzania, between 500,000 to 1.5 million Tanzanians depended on small-scale mining to earn a living in the 1990s but by 2006, when the floodgates to large-scale mining were opened, an estimated 400,000 Tanzanians were without jobs.¹⁶³

Pressure for reforms in the mining sector to protect both local communities around the mines and workers in the mines and improved revenues for the government mounted, especially in the Parliament, following the release of the Commission's findings, and the findings the report commissioned by the religious groups in Tanzania.¹⁶⁴ The Canadian government, as noted already, intervened on behalf of African Barrick Gold, which owns half of the mining concessions in Tanzania, and lobbied through the Canadian High Commission in Tanzania with Tanzanian legislators to block the reforms.¹⁶⁵ While there is a lack of evidence showing whether Canada succeeded in lobbying relevant actors to block the mining sector reforms, it is possible that it delayed urgently needed reforms because Tanzania enacted a new mining law in 2010¹⁶⁶, two years from the released of Presidential Mining Sector Review Committee's report. Crucially,

¹⁵⁶ United Republic of Tanzania, *Report of the Presidential Mining Review Committee to Advise the Government on Oversight of the Mining Sector*, April 2008, online: <http://archive.resourcegovernance.org/training/resource_center/report-tanzanian-presidential-mining-review-committee-advise-government-min>.

¹⁵⁷ *Ibid.*

¹⁵⁸ Mark Curtis & Tundu Lissu, "A Golden Opportunity?: How Tanzania is Failing to Benefit from Gold Mining" (March 2008), online: <<http://religiondev.ipadpetereview.com/wp-content/uploads/2015/02/a-golden-opportunity-justice1.pdf>>; Cf e.g. Aloysius Marcus Newenham-Kahindi, "A Global Mining Corporation and Local Communities in the Lake Victoria Zone: The Case of Barrick Gold Multinational in Tanzania" (2011), 99 J Bus Ethics 253.

¹⁵⁹ *Ibid* at 7.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ *Ibid* at 8.

¹⁶⁴ See Linda McQuaig, "Canada Mines African Discontent", *Toronto Star* (7 June 2011), online: https://www.thestar.com/opinion/editorialopinion/2011/06/06/mcquaig_canada_mines_african_discontent.html.

¹⁶⁵ *Ibid.*

¹⁶⁶ United Republic of Tanzania, "The Mining Act, 2010", *Ministry of Energy and Minerals*, (20 May 2010), online: <https://mem.go.tz/wp-content/uploads/2014/02/0013_11032013_Mining_Act_2010.pdf>.

Canada pressed Tanzania for stronger investor protection in trade with Tanzania with the sole aim of a fast-tracked negotiation of a Foreign Investment Promotion and Protection Agreement (FIPA).¹⁶⁷ One member of the Tanzanian Parliament, Honorable Zitto Kabwe, asked the then Prime Minister, Mizengo Pindu, whether the fast-tracking of FIPA talks was meant to block the Presidential Mining Sector Review Committee from being released in July 2008.¹⁶⁸

According to Canada's Department of Foreign Affairs and International Trade, "Canada's objective in entering these negotiations is to secure comprehensive, high quality agreement to protect investors through establishment of a framework of legal binding rights and obligations."¹⁶⁹ On 16 May 2013, Canada and Tanzania concluded an agreement 'for the promotion and reciprocal protection of investments.'¹⁷⁰ The agreement avoided the standard nomenclature that Canada has been using with other countries, such as Nigeria, the Foreign Investment Promotion and Protection Agreement (FIPA). This may be because of the negative reaction to Canada's aggressive pursuit of a FIPA with Tanzania, including attempts to fast-track the negotiations.

The focus of the Canada-Tanzania agreement on promotion and reciprocal protection of investments is really the establishment of a mechanism for the settlement of investment disputes outside Tanzania's legal system.¹⁷¹ This renders any reforms in the mining sector nugatory because regardless of the reforms, they will often run counter to the investment contracts which will easily trigger the dispute settlement mechanism. In this sense, Canada's lobbying to subvert the mining sector reforms that would have seen better returns for both ordinary Tanzanians and the improve revenue collection for the government are successful. Investor-State Dispute settlement mechanisms often privilege the multinational corporation over and above the citizens of the host country. Concerns about the harm and damage done by some of these investors, such as the mining companies, to the environment and the communities (especially the forced eviction of small scale miners and small holding farmers) receive perfunctory treatment.

V. CONCLUSION:

First, Sovereignty means a bundle of rights and obligations of a people; it resides in the people as the source of authority and power. All peoples around the world are sovereign, in their own right, regardless of their capabilities or abilities. States are abstract and geographic representations of a people and derive their existence and functions because of the people.

Second, States, regardless of the image they portray, seek to maximize their egoistic interests. Some will use military and economic power; others will use ideas such as equality and cooperation or both power and ideas. Some States, especially *middle powers* like Canada, however, will seek to advance their interests in strategic partnerships that emphasize ideas, such as equality and respect and seek complementarity instead of taking advantage of existing

¹⁶⁷ See Edwin, *supra* note 153.

¹⁶⁸ As reported in *SID*, *supra* note 155 at 65.

¹⁶⁹ See, Global Affairs Canada, "Canada-Tanzania Foreign Investment Promotion and Protection Agreement (FIPA) Negotiations", online: <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/tanzania-tanzanie.aspx?lang=eng>>.

¹⁷⁰ See Global Affairs Canada, "Agreement Between the Government of Canada and the Government of the United Republic of Tanzania for the Promotion and Reciprocal Protection of Investments", online: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/tanzania-text-tanzanie.aspx?lang=eng#a5_40>.

¹⁷¹ *Ibid* at Section C: Dispute Settlement Between an Investor and the Host Party.

asymmetries of power, social, and economic relationships that exist between it and prospective partners. In this context, however, ideas simply become the means to an end.

Third, States worry about their image and seek cooperation as a means to enhance and project that image. Both Canada and Nigeria sought through their relationship to project the image of democratic and multicultural functioning and successful federal States. In addition, both States sought to project themselves as champions of human rights (albeit often differently defined) and sought a multilateralist and cooperative approach to resolving conflict and ensuring security for their citizens and those in other conflict-affected parts of the world.

Fourth, States, regardless of their professed commitment to certain values such as human rights, will all-too-often privilege economic interests above all other values. In other words, where there is tension between the goal of realizing economic interests and the goal of promoting human rights, economic interests will almost always prevail.

Finally, ideas, whether as theories, principles, institutions, or doctrines are not value-free; they are shaped by given socio-economic contexts and biases.